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PATENT DEPT. K-6-1, 1990
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KENILWORTH, NJ 07033-0530

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In re Application of : OFFICE OF PETITIONS
Paul S. Cohen :
Application No. 10/569,311 : ON PETITION
Filed: February 22, 2006 :
Attorney Docket No. I-2003.009 US :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed September 30, 2009, to revive the above-identified application.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of December 31, 2008. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2)), an amendment that prima facie places the application in condition for allowance, a Request for Continued Examination (RCE) and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). Since the amendment submitted does not prima facie place the application in condition for allowance, the reply required must be a Notice of Appeal (and appeal fee), RCE, or the filing of a continuing application under 37 CFR 1.53(b).

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b); (2) the petition fee of \$1620; and (3) a proper statement of unintentional delay.

In view of the above, the petition is **GRANTED**.

This application is being revived solely for purposes of continuity. As continuity has been established by this decision, the application is again abandoned in favor of continuing application No. 12/469,863.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See *In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$490 extension of time fee submitted with the petition on September 30, 2009

was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to undersigned at (571) 272-1642.



April M. Wise
Petitions Examiner
Office of Petitions